

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY BONN

C O N F I D E N T I A L STATE 190317

EXDIS

E.O. 11652: GDS

TAGS: PDIP, PFOR, US, GW

SUBJECT: EXTRADITION OF KRISTINA BERSTER

REF: STATE 185317

1. STATE AND JUSTICE OFFICIALS HAVE REVIEWED REQUEST OF FRG EMBASSY OF JULY 21, 1978, FOR THE PROVISIONAL ARREST OF KRISTINA BERSTER AND HAVE DISCUSSED CASE IN SOME DETAIL WITH FRG EMBOFF (KLAIBER).

2. CASE PRESENTS DIFFICULT LEGAL PROBLEMS SINCE MOST OF THE OFFENSES ALLEGED IN THE FRG REQUEST ARE NOT COVERED BY THE US/FRG EXTRADITION TREATY OF 1930, AND BECAUSE CERTAIN OFFENSES WERE NOT COMMITTED WITHIN THE TERRITORIAL JURISDICTION OF THE FRG AS REQUIRED BY THE TREATY. THE
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FRG NOTE LISTS OFFENSES, OUTLINED BELOW, ONLY ONE OF WHICH IS ARGUABLY COVERED BY THE TREATY.

3. ACCORDING TO THE FRG NOTE AND ITS ATTACHED DOCUMENTS, BERSTER IS QTE UNDER STRONG SUSPICION UNQTE OF (1) PARTICIPATING AS A MEMBER OF A TERRORIST GROUP, (2) ACQUIRING STOLEN PROPERTY, AND (3) FALSIFICATION OF

DOCUMENTS AND USE OF FALSIFIED DOCUMENTS. OF THESE OFFENSES ONLY NUMBER 3 IS COVERED BY THE TREATY.

4. HOWEVER, ARTICLE III OF THE TREATY REQUIRES A PERSON TO BE "CHARGED" WITH AN EXTRADITABLE OFFENSE. THERE IS SOME QUESTION WHETHER BERSTER IS "CHARGED" WITH THIS OFFENSE OR IS MERELY "UNDER STRONG SUSPICION", A STAGE OF THE JUDICIAL PROCESS PRIOR TO ACTUAL CHARGING. IT IS LIKELY THAT BERSTER'S LAWYERS WILL ARGUE THAT SHE HAS NOT BEEN CHARGED WITH AN OFFENSE AS THE TREATY REQUIRES. JUSTICE OFFICIALS PLAN TO ARGUE THAT FOR PURPOSES OF THE EXTRADITION TREATY AND UNDER GERMAN LAW A PERSON IS CHARGED WHEN HE IS UNDER STRONG SUSPICION. HOWEVER, IN SO FAR AS THIS OFFENSE RELATES TO THE FALSE USE AND ALTERATION OF AN IRANIAN PASSPORT, JUSTICE OFFICIALS EXPRESS CONCERN THAT THIS MAY NOT BE AN EXTRADITABLE OFFENSE. (SEE FOLLOWING PARA.)

5. ACCORDING TO THE FRG NOTE, BERSTER IS QTE ACCUSED UNQTE (1) OF AFFILIATION WITH A KNOWN TERRORIST GROUP AND (2) USING AND ALTERING A STOLEN IRANIAN PASSPORT. THE FIRST OFFENSE IS NOT COVERED BY THE TREATY AND JUSTICE OFFICIALS ARE STUDYING WHETHER THE SECOND OFFENSE IS EITHER COVERED BY THE TREATY OR IS AN OFFENSE IN THE U.S. FY.I.: U.S. COURTS HAVE ISSUED CONFLICTING OPINIONS CONCERNING THE QUESTION OF WHETHER USE OF A FOREIGN PASSPORT

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IN THE U.S. IS A CRIME UNDER U.S. LAW. END FY.I.

6. JUSTICE OFFICIALS ARE ATTEMPTING TO CONTACT BERSTER'S LAWYER TO INFORM HIM OF THE FRG REQUEST. JUSTICE OFFICIALS WILL ASK BERSTER (THROUGH HER ATTORNEY) TO WAIVE FORMAL PROCEEDINGS, BUT IT IS CONSIDERED UNLIKELY THAT BERSTER WOULD AGREE TO GO BACK TO FRG VOLUNTARILY.

7. JUSTICE PLANS TO INDICT BERSTER ON 7/27/78 ON MISDEMEANOR CHARGE OF ENTERING U.S. ILLEGALLY. INDICTMENT ON U.S. CHARGE MEANS BERSTER CAN BE KEPT IN CUSTODY PENDING TRIAL.

8. THERE IS NO IMMEDIATE NEED TO PRESS PROVISIONAL ARREST REQUEST SINCE BERSTER WILL BE INDICTED ON U.S. CHARGE. THIS MEANS THAT JUSTICE AND STATE CAN WORK WITH FRG OFFICIALS TO DEVELOP BEST POSSIBLE CASE BEFORE PRESENTING PROVISIONAL ARREST REQUEST. JUSTICE OFFICIALS ARE IN DIRECT CONTACT WITH FRG POLICE OFFICIALS WHO ARE ATTEMPTING TO DEVELOP ADDITIONAL EVIDENCE AGAINST BERSTER TO STRENGTHEN CHARGES. FURTHER DISCUSSIONS ARE PLANNED BETWEEN FRG EMBOFFS AND STATE AND JUSTICE OFFICIALS ON HOW

TO PROCEED WITH PROVISIONAL ARREST REQUEST.

9. SINCE THE PRIMARY OFFENSES ARE NOT COVERED BY THE LISTED TREATY OFFENSES, FRG EMBOFF (ON INSTRUCTIONS FROM BONN) HAS RAISED QUESTION OF WHETHER EXTRADITION COULD BE GRANTED ON "BASIS OF RECIPROCITY". OUR UNDERSTANDING OF THIS PROPOSAL IS THAT FRG WOULD AGREE TO GRANT EXTRADITION TO U.S. OF PERSONS FOUND IN FRG WHO WERE ACCUSED IN U.S. OF NON-LISTED OFFENSES. USG CANNOT AGREE TO THIS PROPOSAL SINCE UNDER U.S. LAW EXTRADITION CAN BE DONE BY TREATY ONLY. SEVERAL U.S. SUPREME COURT CASES HAVE HELD THAT THERE IS NO EXTRADITION LAW IN U.S. OUTSIDE THAT FOUND IN APPLICABLE TREATY. ACCORDING TO U.S. VIEW THERE IS NO GENERAL INTERNATIONAL LAW OF
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EXTRADITION WHICH WOULD GOVERN IN AREAS WHERE TREATIES ARE SILENT. FOR EXAMPLE, WITH THOSE STATES WITH WHICH U.S. HAS NO BILATERAL EXTRADITION TREATY, U.S. COULD NOT GRANT AN EXTRADITION REQUEST TO THAT STATE. WE REFERRED FRG EMBOFF TO VOL. 6, WHITEMAN DIGEST OF INTERNATIONAL LAW, PAGE 727, AND FOLLOWING WHICH OUTLINES U.S. LEGAL POSITION ON THIS ISSUE.

10. ABOVE IS INTENDED PRIMARILY FOR EMBASSY INFORMATION ONLY; ALTHOUGH EMBASSY MAY DRAW ON ABOVE IF FRG OFFICIALS SHOULD RAISE THE ISSUE. OUR PRINCIPAL CHANNEL WITH FRG WILL BE VIA FRG EMBASSY HERE. CHRISTOPHER

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